Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1674

L. W. BENNETT & SONS, INC.,

Petitioner,

against

MARCEL ANICHINAPEO, NATIONAL GRANGE MUTUAL INSURANCE COMPANY, and WORKERS' COMPENSATION BOARD,

Respondents.

BRIEF IN OPPOSITION TO CERTIORARI ON BEHALF OF WORKERS' COMPENSATION BOARD

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Respondent
Workers' Compensation Board
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3396

SHIRLEY ADELSON SIEGEL
Solicitor General

A. SETH GREENWALD
Assistant Attorney General
of Counsel

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Opinions Below

The decision of the Appellate Division, Third Department, affirming the decision of the Workers' Compensation Board is reported at 65 A D 2d 105, 411 N.Y.S. 2d 414 (Dec. 14, 1978) and is reproduced as Appendix B to the petition. The denial of leave to appeal by the Court of Appeals is noted at 46 N Y 2d 709 (Feb. 8, 1979) and is reproduced as Appendix A to the petition.

Jurisdiction

The jurisdiction of this Court to review the order below rests on 28 U.S.C. § 1257(3).

Questions Presented

Is New York Workers' Compensation Law § 14-a pre-empted by federal law as to Indian affairs?

Facts

Respondent Marcel Anichinapeo, a 15-year-old Algonquin Indian from Quebec, Canada, was hired to work at the petitioner's mink farm in New York. In the course of his work he received severe injuries to his left hand and filed for Workers' Compensation benefits under the New York Workers' Compensation Law § 14-a which provides for double compensation in certain cases such as where there is also a violation of state law by the employer. It is not disputed now that petitioner had failed to obtain a work permit for Anichinapeo, who was under 16 years, as required by New York Education Law § 3226. This resulted in double compensation.

The Workers' Compensation Board found as above and held that New York law applied as to requiring a work permit. The Appellate Division decision found no pre-emption by Congress of Federal law as to Indian affairs.

Reasons Why the Writ of Certiorari Should be Denied

At the outset it should be noted that claimant, Marcel Anichinapeo, is a respondent herein and petitioner corporation is seeking to invoke principles applied and laws passed for his benefit to deprive him of his Workers' Compensation. There is no claim any Indian law provides any benefits.

The opinion below recognized that the jurisdiction of the Federal Government over Indian matters is exclusive except to the extent that Congress has specifically given its

consent to New York to exercise jurisdiction. The cases cited by petitioner are concerned with protecting the rights of Indians, not depriving them of rights for the benefit of their non-Indian employers.

25 U.S.C. § 233 gives jurisdiction to New York over Indians in these civil proceedings without any exceptions. 8 U.S.C. § 1359, cited by petitioner, only applies to right of American Indians born in Canada to pass the border freely, something that has nothing to do with the instant case. See *Atkins* v. *Saxbe,* 380 F. Supp. 1210, 1219 (D. Me. 1974). It does not protect petitioner corporation from paying Workers' Compensation to an injured employee who happens to be a Canadian Indian. It is not at all clear Anichinapeo is even an American Indian.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: New York, New York
May 30, 1979

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Respondent
Workers' Compensation Board

SHIRLEY ADELSON SIEGEL
Solicitor General

A. SETH GREENWALD
Assistant Attorney General
of Counsel